IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.212 OF 2007

Smt Fatemabi Noormohammed Bawani ...Appellant

Versus

Shri Kailash Vasant Salve & Ors. ...Respondents

Shri S.S.Patwardhan for the Appellant.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 12, 2007.

P.C.:

1. Heard Shri Patwardhan appearing for the Appellant. The Appellant is the original Plaintiff. The Appellant filed a suit for declaration that the Development Agreement and Power of Attorney dated 23rd July, 1997 obtained by the first to fourth Respondents in respect of the suit property was illegal and void. A declaration is also claimed that four different Deeds of Mortgage dated 02nd August, 1997 obtained by fifth and sixth Respondents as well as four different Deeds of Rectification of the mortgage were illegal and void and were not binding on the Appellant-Plaintiff. An Application was made at Exhibit 71 by the Appellant-Plaintiff. In the said Application a reference was made to a public notice published on 11th September, 2006 at the instance of fifth and sixth

Respondents. It is alleged that the said public notice indicates that the Appellant was sought to be dispossessed by the fifth Respondent-Bank. Therefore, a prayer for injunction was made restraining the fifth Respondent from selling the suit property. The said Application for temporary injunction has been rejected by the impugned Judgment and Order dated 18th January, 2007. The learned trial Judge found that the fifth Respondent has served a notice under sub section 2 of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Appellant and to the first to fourth Respondents as the loan has not been repaid by the first to fourth Respondents. The learned Judge recorded a prima facie finding that the Deeds of Mortgage executed by the first to fourth Respondents were not legal as the Power of Attorney on the basis of which the said deeds were executed was not registered. The learned Judge, however, found that convection deeds were executed by the Appellant which have been registered which confirm the execution of earlier Deeds of Mortgage executed by first to fourth Respondents.

2. After having heard the submissions of Shri

Patwardhan appearing for the Appellant I find that inview of prima facie evidence of execution of Deeds of Mortgage, there is a justification for coming to the conclusion that in view of section 34 of the said Act of 2002, the Civil Court may not have jurisdiction to entertain suit. The trial Court referred to the remedy available under the said Act of 2002.

3. The submission of Shri Patwardhan was that there is absolutely no evidence to show that the Appellant executed Deeds of Mortgage. However, there is a prima facie finding recorded that Deeds of Mortgage were executed by first to fourth Respondents on the basis of a Power of Attorney executed by the Appellant and there are further registered deeds to which the Appellant is a signatory which confirm the execution of earlier Deeds of Mortgage. Therefore, it is not possible to accept the said submission.

4. In case of **Mardia Chemcials Ltd & Ors Vs. Union of India & Ors [(2004) 4 Supreme Court Cases Page 311]** the Apex Court held that under section 34 of the said Act of 2002, the jurisdiction of the civil court was barred. However, it was held that the jurisdiction of a

Civil Court could be invoked to a very limited extent. The Apex Court held that the jurisdiction can be invoked to the extent permissible in the cases of English mortgages, that is, for example, where the action of the secured creditor is alleged to be fraudulent or his claim is so absurd and untenable as to not require any probe whatsoever. Prima facie it is difficult to come to the conclusion that the present case is covered by the said exception.

5. Therefore, it is very difficult to find fault with the impugned order and the Appeal deserves to be dismissed. However, it must be made clear that the observations made in this order are for limited purposes of examining the legality and validity of the order passed by the trial Court. None of these observations will affect the remedy available to the Appellant under the said Act of 2002 and all contentions of the Appellant in that behalf are expressly kept open.

6. Subject to what is stated above, Appeal is dismissed.

JUDGE